

# HOUSE BILL No. 1279

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1.

**Synopsis:** Telecommunications. Specifies that a person that transmits communications over Internet Protocol enabled services is not a public utility. Prohibits the utility regulatory commission (IURC) from exercising jurisdiction over: (1) advanced and broadband services; and (2) information services. Prohibits, after June 30, 2007, the IURC from exercising jurisdiction over nonbasic telecommunications service. Requires an incumbent local exchange carrier (ILEC) to continue to offer a flat monthly rate for unlimited local calling in exchange areas in which the provider offers basic telecommunications service on June 30, 2006. Provides that an extended area of service in which a provider offers basic telecommunications service on June 30, 2006, may not be reduced in area or scope without the IURC's approval. Prohibits the IURC from exercising jurisdiction over basic telecommunications service in an exchange area if broadband services are available to at least 50% of households. Requires the IURC to biennially identify and eliminate obsolete telecommunications regulations. Specifies that duties to provide dual party relay services apply to a communications service provider that is required to provide such services under federal law. Preserves the IURC's jurisdiction over: (1) dual party relay services; (2) the 211 dialing code; (3) slamming and cramming laws; (4) interconnection agreements; and (5) rates charged by an ILEC to a pay phone service provider. Prohibits a telecommunications provider that is: (1) exempt from IURC jurisdiction in one or more service areas; or (2) subject to relaxed regulation under a settlement agreement; from engaging in predatory pricing and certain anticompetitive practices at the retail and wholesale levels. Allows the IURC to: (1) establish

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**Effective:** Upon passage; July 1, 2006.

**Murphy**

January 10, 2006, read first time and referred to Committee on Technology, Research and Development.



service quality standards for services provided by an ILEC to another provider; and (2) require quarterly reporting of service quality goals for other services offered by a provider. Allows the IURC to: (1) order certain equitable remedies; and (2) impose a civil penalty of not more than \$10,000; if a provider engages in a prohibited act. Provides that a civil penalty may be imposed only for: (1) predatory pricing; (2) a willful failure to comply with service quality standards or goals; or (3) certain billing errors. Prohibits: (1) a communications service provider; or (2) the owner, operator, or developer of multitenant real estate; from limiting or restricting access to privately or publicly owned real property by a communications service provider authorized to provide service. Provides that after June 30, 2006, the IURC is the sole franchising authority for the provision of video service in Indiana. Provides that the holder of a state issued franchise must comply with state and local laws governing the use of rights-of-way. Allows the holder of a local franchise on June 30, 2006, to: (1) continue providing service under the local franchise until the local franchise expires; or (2) terminate the local franchise and apply to the IURC for a state issued franchise. Provides that a provider that terminates a local franchise remains subject to any obligations owed to a private person under the franchise until the time the terminated franchise would ordinarily expire. Requires the holder of a state issued franchise to pay a quarterly franchise fee to each local government unit included in the holder's service area. Provides that the fee to be paid to a unit equals 5% of the provider's gross revenue generated in the unit. Prescribes requirements concerning public, educational, and governmental channel capacity and financial support. Prohibits a provider from denying access to video service to potential subscribers based on income. Requires the IURC to submit to the regulatory flexibility committee an analysis of various telecommunications issues.

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Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

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## HOUSE BILL No. 1279

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A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 8-1-2-1 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) **Except as provided in**  
3 **section 1.1 of this chapter**, "public utility", as used in this chapter,  
4 means every corporation, company, partnership, limited liability  
5 company, individual, association of individuals, their lessees, trustees,  
6 or receivers appointed by a court, that may own, operate, manage, or  
7 control any plant or equipment within the state for the:  
8       (1) conveyance of telegraph or telephone messages;  
9       (2) production, transmission, delivery, or furnishing of heat, light,  
10      water, or power; or  
11      (3) collection, treatment, purification, and disposal in a sanitary  
12      manner of liquid and solid waste, sewage, night soil, and  
13      industrial waste.  
14      The term does not include a municipality that may acquire, own, or  
15      operate any of the foregoing facilities.

2006

IN 1279—LS 6902/DI 101+



(b) "Municipal council", as used in this chapter, means the legislative body of any town or city in Indiana wherein the property of the public utility or any part thereof is located.

(c) "Municipality", as used in this chapter, means any city or town of Indiana.

(d) "Rate", as used in this chapter, means every individual or joint rate, fare, toll, charge, rental, or other compensation of any utility or any two (2) or more such individual or joint rates, fares, tolls, charges, rentals, or other compensation of any utility or any schedule or tariff thereof, but nothing in this subsection shall give the commission any control, jurisdiction, or authority over the rate charged by a municipally owned utility except as in this chapter expressly provided.

(e) "Service" is used in this chapter in its broadest and most inclusive sense and includes not only the use or accommodation afforded consumers or patrons but also any product or commodity furnished by any public or other utility and the plant, equipment, apparatus, appliances, property, and facility employed by any public or other utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public or other utility is engaged and to the use and accommodation of the public.

(f) "Commission", as used in this chapter, means the commission created by IC 8-1-1-2.

(g) "Utility", as used in this chapter, means every plant or equipment within the state used for:

- (1) the conveyance of telegraph and telephone messages;
- (2) the production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to the public; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate facilities for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste. A warehouse owned or operated by any person, firm, limited liability company, or corporation engaged in the business of operating a warehouse business for the storage of used household goods is not a public utility within the meaning of this chapter.

(h) "Municipally owned utility", as used in this chapter, includes every utility owned or operated by a municipality.

(i) "Indeterminate permit", as used in this chapter, means every grant, directly or indirectly from the state, to any corporation, company,

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partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, of power, right, or privilege to own, operate, manage, or control any plant or equipment, or any part of a plant or equipment, within this state, for the:

- (1) production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to or for the public;
- (2) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste; or
- (3) furnishing of facilities for the transmission of intelligence by electricity between points within this state;

which shall continue in force until such time as the municipality shall exercise its right to purchase, condemn, or otherwise acquire the property of such public utility, as provided in this chapter, or until it shall be otherwise terminated according to law.

SECTION 2. IC 8-1-2-1.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 1.1. A person or an entity that:**

- (1) transmits communications over Internet Protocol enabled services, including:**
  - (A) voice;**
  - (B) data;**
  - (C) video; or**
  - (D) any combination of voice, data, and video communications; or**
- (2) provides the necessary software, hardware, transmission service, or transmission path for communications described in subdivision (1);**

**is not a public utility (as defined in section 1 of this chapter) solely by reason of engaging in any activity described in subdivisions (1) through (2).**

SECTION 3. IC 8-1-2.6-0.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.1. (a) As used in this chapter, "basic telecommunications service" means stand alone telephone exchange service (as defined in 47 U.S.C. 153(47)) that:**

- (1) is provided to a residential customer through the customer's primary line; and**
- (2) is:**
  - (A) the sole service purchased by the customer;**
  - (B) not part of a package of services, a promotion, or a**

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contract; or

(C) not otherwise offered at a discounted price.

(b) The term includes, at a minimum, the following:

(1) Voice grade access to the public switched telephone network with minimum bandwidth of three hundred (300) to three thousand (3,000) Hertz.

(2) Dual tone multifrequency signaling and single party service.

(3) Access to:

(A) emergency services, including access to 911 and enhanced 911 if provided by the local government having jurisdiction in the service area;

(B) operator services;

(C) local directory assistance;

(D) telephone relay services; and

(E) interexchange service.

(4) Toll limitation services for qualifying low income customers.

SECTION 4. IC 8-1-2.6-0.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.2.** As used in this chapter, "incumbent local exchange carrier" has the meaning set forth in 47 U.S.C. 251(h).

SECTION 5. IC 8-1-2.6-0.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.3.** (a) As used in this chapter, "nonbasic telecommunications service" means retail telecommunications service other than:

(1) basic telecommunications service, except when the service is purchased by the customer:

(A) in conjunction with another service;

(B) as part of a package of services, a promotion, or a contract; or

(C) at an otherwise discounted price;

(2) commercial mobile radio service (as defined in 47 CFR 51.5);

(3) services outside the jurisdiction of the commission under section 1.1 of this chapter; and

(4) switched and special access services.

(b) The term includes services included in:

(1) customer specific contracts;

(2) volume, term, and discount pricing options; and

(3) packages, bundles, and promotions, including offers

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designed to win new customers, retain existing customers, or win back former customers.

SECTION 6. IC 8-1-2.6-0.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.4. As used in this chapter, "payphone service provider" means an entity, other than an incumbent local exchange carrier, that owns and operates:**

- (1) public or semipublic pay telephones; or
- (2) pay telephones used to provide telephone service in correctional institutions.

SECTION 7. IC 8-1-2.6-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.5. As used in this chapter, "provider" means a person or an entity that offers basic or nonbasic telecommunications service.**

SECTION 8. IC 8-1-2.6-0.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.6. As used in this chapter, "telecommunications" has the meaning set forth in 47 U.S.C. 153(43).**

SECTION 9. IC 8-1-2.6-0.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.7. As used in this chapter, "telecommunications service" has the meaning set forth in 47 U.S.C. 153(46).**

SECTION 10. IC 8-1-2.6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 1. The Indiana general assembly hereby declares that:**

- (1) the maintenance of universal telephone service is a continuing goal of the commission in the exercise of its jurisdiction;
  - (2) competition has become commonplace in the provision of ~~certain telephone~~ **telecommunications** services in Indiana and the United States;
  - (3) **advancements in and the convergence of technologies that provide voice, video, and data transmission, including:**
    - (A) **landline, wireless, cable, satellite, and Internet transmissions; and**
    - (B) **transmissions involving voice over Internet Protocol (VOIP), Internet Protocol enabled services, and voice over power lines;**
- are substantially increasing consumer choice, reinventing the marketplace with unprecedented speed, and making available highly competitive products and services and new methods of delivering local exchange service;**

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~~(3)~~ **(4)** traditional ~~commission~~ regulatory policies, ~~and~~ practices, and ~~existing~~ statutes are not designed to deal with a competitive environment **and technological advancements;**

~~(4)~~ **(5)** an environment in which Indiana consumers will have available the widest array of state-of-the-art ~~telephone~~ **communications** services at the most economic and reasonable cost possible will necessitate full and fair **facilities based** competition in the delivery of ~~certain telephone~~ **telecommunications** services throughout ~~the state;~~ **Indiana;** and ~~(5)~~ **(6)** **streamlining of, and** flexibility in, the regulation of providers of ~~telephone~~ **telecommunications** services, **regardless of the technology used,** is essential to the well-being of ~~the state;~~ **Indiana,** its economy, and its citizens and that the public interest requires that the commission be authorized to formulate and adopt rules and policies as will permit the commission, in the exercise of its expertise, to regulate and control the provision of ~~telephone~~ **telecommunications** services to the public in an increasingly competitive **and technologically changing** environment, giving due regard to the interests of consumers and the public, **the ability of market forces to encourage innovation and investment,** and to the continued **universal** availability of ~~universal telephone~~ **basic telecommunications** service.

SECTION 11. IC 8-1-2.6-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 1.1. The commission may not exercise jurisdiction over:**

- (1) advanced services (as defined in 47 CFR 51.5);**
- (2) broadband service, however defined or classified by the Federal Communications Commission;**
- (3) information services (as defined in 47 U.S.C. 153(20));**
- (4) Internet Protocol enabled services:**
  - (A) regardless of how the service is classified by the Federal Communications Commission; and**
  - (B) except as expressly permitted under IC 8-1-2.8; or**
- (5) any service not commercially available on July 1, 2006.**

SECTION 12. IC 8-1-2.6-1.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 1.2. (a) Except as provided in section 16 of this chapter, the commission shall not, by entering an order, adopting a rule, or taking any other action, do any of the following:**

- (1) Impose a regulation concerning any nonbasic**

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telecommunications service unless the regulation is imposed equally and uniformly on all providers.

(2) Impose a service quality regulation or performance standard concerning any nonbasic telecommunications service.

(3) Exercise jurisdiction over:

(A) any nonbasic telecommunications service; or

(B) the provider of any nonbasic telecommunications service;

if the commission has declined to exercise jurisdiction over the service or provider before July 1, 2006.

(b) Subject to sections 12 and 16 of this chapter, and except as provided in IC 8-1-29.5, after June 30, 2007, the commission shall not exercise jurisdiction over any nonbasic telecommunications service except as follows:

(1) A provider may elect to file and maintain with the commission tariffs for nonbasic telecommunications services offered by the provider in Indiana. The commission shall permit a provider to implement a tariff, or a modification to a tariff, on the first day immediately following the date of filing with the commission.

(2) The commission may investigate, on a formal or an informal basis, a complaint concerning a provider's compliance with a tariff filed with the commission under subdivision (1). The commission's investigation shall be limited to the sole issue of the provider's compliance with the filed tariff. The commission shall conduct a formal investigation only upon the request of any class satisfying the standing requirements of IC 8-1-2-54.

SECTION 13. IC 8-1-2.6-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1.3. (a) The commission shall not, by entering an order, adopting a rule, or taking any other action, do any of the following with respect to basic telecommunications services and providers of basic telecommunications services:

(1) Impose a regulation concerning any basic telecommunications service unless the regulation is imposed equally and uniformly on all providers.

(2) Impose a service quality regulation unless the regulation is imposed equally and uniformly on all providers.

(3) Impose a regulation or performance standard concerning service quality that:

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- 1 (A) is more stringent than any service quality regulation or  
 2 performance standard in effect on June 30, 2006; or  
 3 (B) measures performance more often than quarterly.  
 4 (4) Impose a reporting requirement concerning service  
 5 quality that requires reporting to the commission more  
 6 frequently than quarterly.  
 7 (5) Impose a regulation concerning universal availability of  
 8 basic telecommunications service unless the regulation is  
 9 imposed on a nondiscriminatory and competitively and  
 10 technologically neutral basis.  
 11 (6) Exercise jurisdiction over:  
 12 (A) any basic telecommunications service; or  
 13 (B) the provider of any basic telecommunications service;  
 14 if the commission has declined to exercise jurisdiction over the  
 15 service or provider before July 1, 2006.  
 16 (7) Impose a regulation on, or exercise jurisdiction over:  
 17 (A) any basic telecommunications service; or  
 18 (B) the provider of any basic telecommunications service;  
 19 if the service or provider is exempt from commission  
 20 jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5, except as  
 21 allowed under IC 8-1-2-88.5, IC 8-1-17-22.5, or IC 8-1-29.5.  
 22 (b) Except as provided in IC 8-1-29.5, the commission may not  
 23 exercise jurisdiction over:  
 24 (1) the price, terms, and conditions of basic  
 25 telecommunications service; or  
 26 (2) any provider of basic telecommunications service;  
 27 in an exchange area in which the commission finds, after notice and  
 28 hearing, that broadband services are available to at least fifty  
 29 percent (50%) of the households located in the exchange area. The  
 30 commission may make a finding under this subsection at the  
 31 request of a provider or on the commission's own motion. In  
 32 making a finding under this subsection, the commission shall not  
 33 consider broadband services provided through radio frequencies  
 34 allocated by the Federal Communications Commission to Direct  
 35 Broadcast Satellite Service (as defined in 47 CFR 25.201).  
 36 (c) The commission shall make a finding under subsection (b)  
 37 not later than six (6) months after a provider's request to make a  
 38 finding as to whether broadband services are available to at least  
 39 fifty percent (50%) of the households located in an exchange area.  
 40 (d) Notwithstanding subsections (b) through (c), a provider may  
 41 continue to elect to file and maintain with the commission tariffs  
 42 for basic telecommunications services offered by the provider in

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1 Indiana. The commission shall permit a provider to implement a  
 2 tariff or a modification to a tariff on the first day immediately  
 3 following the date of filing with the commission. A provider may  
 4 withdraw without the approval of the commission any tariff filed  
 5 under this subsection.

6 (e) The commission may investigate, on a formal or an informal  
 7 basis, a complaint concerning a provider's compliance with a tariff  
 8 filed with the commission under subsection (d). The commission's  
 9 investigation shall be limited to the sole issue of the provider's  
 10 compliance with the filed tariff. The commission shall conduct a  
 11 formal investigation only upon the request of any class satisfying  
 12 the standing requirements of IC 8-1-2-54.

13 (f) An incumbent local exchange carrier shall continue to make  
 14 available a flat monthly rate with unlimited local calling for basic  
 15 telecommunications services in the exchange areas in which the  
 16 provider offers basic telecommunications services on June 30,  
 17 2006. An extended area of service in which a provider offers basic  
 18 telecommunications services on June 30, 2006, may not be reduced  
 19 in area or scope without the approval of the commission after  
 20 notice and hearing.

21 SECTION 14. IC 8-1-2.6-2 IS AMENDED TO READ AS  
 22 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) ~~Notwithstanding~~  
 23 ~~any other statute, the commission may:~~

24 (1) ~~on its own motion;~~

25 (2) ~~at the request of the utility consumer counselor;~~

26 (3) ~~at the request of one (1) or more telephone companies; or~~

27 (4) ~~at the request of any class satisfying the standing requirements~~  
 28 ~~of IC 8-1-2-54;~~

29 ~~enter an order, after notice and hearing, that the public interest requires~~  
 30 ~~the commission to commence an orderly process to decline to exercise,~~  
 31 ~~in whole or in part, its jurisdiction over telephone companies or certain~~  
 32 ~~telephone services. (a) This section applies to commission rules and~~  
 33 ~~orders concerning telecommunications service or providers of~~  
 34 ~~telecommunications service.~~

35 (b) Rules and orders described in this section:

36 (1) may be adopted or issued only after notice and hearing;  
 37 and

38 (2) must be:

39 (A) consistent with this chapter; and

40 (B) in the public interest, as determined by the commission  
 41 under subsection (d).

42 (c) Rules and orders described in this section must promote one

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(1) or more of the following:

(1) Cost minimization for providers to the extent that a provider's quality of service and facilities are not diminished.

(2) A more accurate evaluation by the commission of a provider's physical or financial conditions or needs, as well as a less costly regulatory procedure for the provider, the provider's customers, or the commission.

(3) Development of depreciation guidelines and procedures that recognize technological obsolescence.

(4) Increased provider management efficiency beneficial to customers.

(5) Regulation consistent with a competitive environment.

~~(b)~~ (d) In determining whether the public interest will be served, as required under subsection (b), the commission shall consider:

(1) whether technological change, competitive forces, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the commission unnecessary or wasteful;

(2) whether the exercise of commission jurisdiction produces tangible benefits to ~~telephone company~~ the customers of providers; and

(3) whether the exercise of commission jurisdiction inhibits a regulated entity from competing with unregulated providers of functionally similar ~~telephone~~ telecommunications services or equipment.

~~(c)~~ The commission may:

(1) on its own motion;

(2) at the request of the utility consumer counselor;

(3) at the request of one ~~(1)~~ or more telephone companies; or

(4) at the request of any class satisfying the standing requirements of IC 8-1-2-54;

enter an order notifying any telephone company or class of telephone companies jurisdiction over which was either limited or not exercised according to this section that the commission will proceed to exercise jurisdiction over the telephone company; class of telephone companies; or class of telephone services provided by telephone companies to the extent the commission considers appropriate unless one ~~(1)~~ or more of those telephone companies formally request a hearing within fifteen ~~(15)~~ days following the date of such order.

SECTION 15. IC 8-1-2.6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) A regulatory flexibility committee is established to monitor competition in the

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1 ~~telephone~~ **telecommunications** industry.

2 (b) The committee is composed of the members of a house standing  
3 committee selected by the speaker of the house of representatives and  
4 a senate standing committee selected by the president pro tempore of  
5 the senate. In selecting standing committees under this subsection, the  
6 speaker and president pro tempore shall determine which standing  
7 committee of the house of representatives and the senate, respectively,  
8 has subject matter jurisdiction that most closely relates to the  
9 electricity, gas, energy policy, and telecommunications jurisdiction of  
10 the regulatory flexibility committee. The chairpersons of the standing  
11 committees selected under this subsection shall cochair the regulatory  
12 flexibility committee.

13 (c) The commission shall, by July 1 of each year, prepare for  
14 presentation to the regulatory flexibility committee ~~an analysis of a~~  
15 **report that includes the following:**

16 **(1) An analysis of the effects of competition and technological**  
17 **change on universal service and on pricing of all telephone**  
18 **telecommunications services under the jurisdiction of the**  
19 **commission offered in Indiana.**

20 **(2) An analysis of the status of competition and technological**  
21 **change in the provision of video service (as defined in**  
22 **IC 8-1-34-14) to Indiana customers, as determined by the**  
23 **commission in carrying out its duties under IC 8-1-34. The**  
24 **commission's analysis under this subdivision must include a**  
25 **description of:**

26 **(A) the number of multichannel video programming**  
27 **distributors offering video service to Indiana customers;**

28 **(B) the technologies used to provide video service to**  
29 **Indiana customers; and**

30 **(C) the effects of competition on the pricing and**  
31 **availability of video service in Indiana.**

32 **(3) Beginning with the report due July 1, 2008, and in each**  
33 **report due in an even-numbered year after July 1, 2008:**

34 **(A) an identification of all telecommunications rules and**  
35 **policies that are eliminated; and**

36 **(B) a justification for all telecommunications rules and**  
37 **policies that are retained;**

38 **by the commission under section 4.1 of this chapter during the**  
39 **two (2) most recent state fiscal years.**

40 (d) In addition to reviewing the commission report prepared under  
41 subsection (c), the regulatory flexibility committee shall also issue a  
42 report and recommendations to the legislative council by November 1

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of each year that is based on a review of the following issues:

- (1) The effects of competition **and technological change** in the ~~telephone~~ **telecommunications** industry and impact of competition on available subsidies used to maintain universal service.
- (2) The status of modernization of the ~~public telephone network~~ **publicly available telecommunications infrastructure** in Indiana and the incentives required to further enhance this infrastructure.
- (3) The effects on economic development and educational opportunities of ~~this the~~ modernization **described in subdivision (2).**
- (4) The current ~~method~~ **methods** of regulating ~~telephone companies~~ **providers, at both the federal and state levels,** and the ~~method's~~ **effectiveness of the methods.**
- (5) The economic and social effectiveness of current ~~telephone~~ **telecommunications** service pricing.
- (6) All other telecommunications issues the committee deems appropriate.

The report and recommendations issued under this subsection to the legislative council must be in an electronic format under IC 5-14-6.

(e) The regulatory flexibility committee shall meet on the call of the cochairpersons to study telecommunications issues described in subsection (d). The committee shall, with the approval of the commission, retain the independent consultants the committee considers appropriate to assist the committee in the review and study. The expenses for the consultants shall be paid by the commission.

SECTION 16. IC 8-1-2.6-4.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 4.1. (a) Not later than:**

**(1) July 1, 2008; and**

**(2) July 1 of each even-numbered year after July 1, 2008; the commission shall, through rulemaking under IC 4-22-2 or another commission proceeding, identify and eliminate regulations and policies concerning telecommunications services and providers that are no longer necessary or appropriate as a result of technological advancement and competition in the telecommunications industry.**

**(b) In carrying out this section, the commission shall promote the policies and purposes set forth in this chapter. Beginning in 2008, and in each even-numbered year after 2008, the commission's annual report to the regulatory flexibility committee under section**

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**4 of this chapter must:**

**(1) identify any regulation or policy eliminated; and**

**(2) justify any regulation or policy that is retained;**

**by the commission under this section during the two (2) most recent state fiscal years.**

SECTION 17. IC 8-1-2.6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) As used in this section, "rate reduction" means a decrease in either recurring or nonrecurring rates or charges.

(b) Notwithstanding any other provision of this chapter or any other statute, a ~~telephone company~~ **provider** may ~~subject to the prior approval of the commission,~~ participate in any rate reduction program for residential customers funded from revenues provided by any governmental entity or other revenues administered by an agency of that entity.

SECTION 18. IC 8-1-2.6-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. (a) **In acting to impose any requirements or set any prices concerning:**

**(1) unbundled network elements;**

**(2) the resale of telecommunications services; or**

**(3) interconnection with the facilities and equipment of providers;**

**the commission shall not exceed the authority delegated to the commission under federal laws and regulations with respect to those actions.**

**(b) The commission shall establish reasonable pricing for:**

**(1) unbundled network elements, to the extent the commission is authorized to establish pricing for unbundled network elements under any authority lawfully delegated to the commission by the Federal Communications Commission;**

**(2) the resale of telecommunications service; and**

**(3) interconnection with the facilities and equipment of providers;**

**in accordance with the federal Telecommunications Act of 1996, 47 U.S.C. 251 et seq., and all other federal laws and regulations.**

**(c) This chapter does not affect:**

**(1) the commission's continuing authority to:**

**(A) act under 47 U.S.C. 252(a) to mediate a dispute between providers concerning interconnection, the resale of services, or access to network elements;**

**(B) act under 47 U.S.C. 252(b) to arbitrate a dispute**

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between providers concerning interconnection, the resale of services, or access to network elements;

(C) act under 47 U.S.C. 252(e) to approve an interconnection agreement between providers; or

(D) review and approve a provider's statement of terms and conditions under 47 U.S.C. 252(f);

(2) a provider's ability to file a complaint with the commission to have a dispute, after notice and hearing, decided by the commission consistent with this article;

(3) the commission's duties under IC 8-1-2.8 concerning the provision of dual party relay services to hearing impaired and speech impaired persons in Indiana;

(4) the commission's duties under IC 8-1-19.5 concerning the administration of the 211 dialing code for communications service used to provide access to human services information and referrals;

(5) the commission's responsibilities under IC 8-1-29 to adopt and enforce rules to ensure that a customer of a telecommunications provider is not:

(A) switched to another telecommunications provider unless the customer authorizes the switch; or

(B) billed for services by a telecommunications provider that without the customer's authorization added the services to the customer's service order; or

(6) the commission's authority to:

(A) investigate whether a provider has engaged in prohibited actions; and

(B) provide equitable relief or impose civil penalties for violations;

under IC 8-1-29.5.

SECTION 19. IC 8-1-2.6-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. (a) Notwithstanding any other law, the commission shall not, by entering an order, adopting a rule, or taking any other action, impose a regulation or performance standard concerning the transfer of customers between providers unless the regulation or performance standard is imposed equally and uniformly on all providers.

(b) After a customer's telecommunications services have been transferred, the initial provider may, to the extent permitted by federal law and by IC 24-4.7-4, contact the customer to confirm that the customer has made the decision to change to the other

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provider.

(c) A provider may not refuse to transfer or facilitate the transfer of a local exchange service customer of the provider to another provider on the same terms and conditions that the provider receives from any other provider unless the terms and conditions violate federal law.

SECTION 20. IC 8-1-2.6-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 12. This chapter does not terminate or otherwise change the terms and conditions of a settlement agreement approved by the commission under this chapter before July 29, 2004.**

SECTION 21. IC 8-1-2.6-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 13. This chapter does not modify, affect, or nullify the responsibilities lawfully delegated to the commission under:**

- (1) 47 U.S.C. 251; and
- (2) 47 U.S.C. 252.

SECTION 22. IC 8-1-2.6-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 14. This chapter does not affect the rights and obligations of any person or entity concerning the payment of switched network access rates or other carrier compensation concerning:**

- (1) Internet Protocol enabled service;
- (2) advanced services (as defined in 47 CFR 51.5);
- (3) broadband service; or
- (4) other Internet access services.

SECTION 23. IC 8-1-2.6-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 15. (a) Except as provided in subsection (b), if there is a conflict between this chapter and another provision of this article, this chapter controls.**

**(b) This chapter does not affect the rights of a telecommunications provider under IC 8-1-2-88.5 or IC 8-1-17-22.5.**

SECTION 24. IC 8-1-2.6-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 16. Notwithstanding any other statute, the commission shall retain jurisdiction to establish just and reasonable rates that may be charged by an incumbent local exchange carrier to a payphone service provider. Rates established**

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under this section must be:

- (1) based on the costs incurred by the incumbent local exchange carrier to provide the service;
- (2) consistent with the requirements of 47 U.S.C. 276;
- (3) nondiscriminatory; and
- (4) consistent with the pricing guidelines for payphone service providers established by the Federal Communications Commission.

SECTION 25. IC 8-1-2.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) As used in this chapter, "dual party relay services" means ~~telephone~~ **telecommunications** transmission services that provide the ability for a person who has a hearing impairment or speech impairment to engage in communication ~~by wire or radio~~ with a hearing person in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services. ~~by wire or radio.~~

(b) The term includes services that enable two-way communication between a person who uses a telecommunications device for the deaf or other nonvoice terminal and a person who does not use such a device.

SECTION 26. IC 8-1-2.8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. As used in this chapter, "local exchange ~~telephone~~ company" or "LEC" means a company authorized by the commission to provide, among other services, local exchange access service. ~~refers to any communications service provider (as defined in IC 8-1-32.6-6) that:~~

- (1) offers communications service to customers in Indiana; and
- (2) is required to provide dual party relay services to hearing impaired and speech impaired persons under federal law.

SECTION 27. IC 8-1-2.8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. The general assembly finds and declares the following:

- (1) That it is in the public interest of the state to promptly provide hearing impaired or speech impaired persons with access to ~~telephone~~ **telecommunications** services that are functionally equivalent to those provided to hearing persons.
- (2) That Title IV of the ADA mandates that each telephone company providing telephone service within the state must provide dual party relay services on or before July 26, 1993, to hearing impaired and speech impaired persons within the

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territorial area or areas it serves in a manner that meets or exceeds the requirements of regulations prescribed by the FCC.

(3) That the most efficient, cost effective, and fair method for LECs to provide dual party relay services to hearing impaired and speech impaired persons and to comply with the federal mandate without the use of tax revenues is the establishment of the Indiana Telephone Relay Access Corporation for the Hearing and Speech Impaired under this chapter.

(4) That the provision of dual party relay services to hearing impaired and speech impaired persons can be enhanced by providing in appropriate circumstances in the sole discretion of the InTRAC telecommunications devices that facilitate access to the dual party relay services.

SECTION 28. IC 8-1-2.8-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 18. The articles of incorporation of the InTRAC must provide the following:

(1) The name of the corporation shall be "Indiana Telephone Relay Access Corporation for the Hearing and Speech Impaired".

(2) The sole purpose for which the InTRAC shall be organized and operated is to provide at the lowest cost reasonably possible:

(A) on behalf of ~~telephone companies~~ LECs and the citizens of Indiana; and

(B) in conjunction with ~~telephone companies;~~ LECs; adequate and dependable dual party relay services that may include in appropriate circumstances in the sole discretion of the InTRAC telecommunications devices to hearing impaired and speech impaired persons within the territorial area that ~~telephone companies~~ LECs serve in a manner that meets or exceeds the requirements of regulations prescribed by the FCC.

(3) The InTRAC must have authority to perform any lawful act that is necessary, convenient, or expedient to accomplish the purpose for which the InTRAC is formed.

(4) No part of the net earnings of the InTRAC may inure to the benefit of any member, director, or officer of the InTRAC, nor shall any member of the InTRAC receive any earnings from the corporation except as follows:

(A) A member may be an independent contractor, a supplier, a vendor, or an authorized agent of the InTRAC and may receive fair and reasonable compensation for the member's provision of goods or services.

(B) An officer may receive reasonable compensation for services that the officer performs in the officer's capacity as an

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officer of the InTRAC.

(C) A director may be reimbursed for expenses incurred by the director in the performance of the director's duties.

(5) The InTRAC may not:

(A) make an advancement for services to be performed in the future; or

(B) make a loan of money or property to any director or officer of the corporation.

(6) No member, director, or officer of the InTRAC or any private individual may share in the distribution of any of the assets of the InTRAC upon its dissolution.

(7) If there is a dissolution of the InTRAC, any of the assets of the InTRAC available for distribution shall be distributed to a charity:

(A) selected by the board of directors of the InTRAC; and

(B) having a purpose that includes providing services to hearing impaired and speech impaired persons.

(8) The InTRAC shall have one (1) class of members consisting of those ~~telephone companies~~ **communications service providers (as defined in IC 8-1-32.6-6)** that are designated as authorized LECs by the commission.

(9) Each member of the InTRAC shall serve as a member for as long as the commission finds that the member is a LEC. A member's:

(A) right to vote at meetings of the members of the InTRAC; and

(B) right, title, and interest in or to the corporation; cease on the termination of a member's membership.

(10) Each member present in person or by proxy at a meeting of the members of the InTRAC may cast one (1) vote upon each question voted upon at:

(A) all meetings of the members; and

(B) in any election of a director of the InTRAC.

(11) The board of directors of the InTRAC consists of seven (7) directors selected as follows:

(A) Six (6) directors elected by the members of the InTRAC.

(B) The director of the state office of deaf and hearing impaired services.

(12) The business, property, and affairs of the InTRAC are managed and controlled by the board of directors of the InTRAC.

SECTION 29. IC 8-1-2.8-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 20. (a) In pursuit of its purpose, the InTRAC may do the following:

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(1) Perform audits and tests of the accounts of a LEC to verify the amounts described in section 12 of this chapter.

(2) Provide by contract dual party relay services to ~~telephone companies~~ **communications service providers** operating outside of the state if the effect of the contract:

(A) is to decrease the amount of surcharges imposed on the customers of members of the InTRAC; and

(B) does not sacrifice the quality of service that InTRAC provides for those customers in the absence of a contract.

(b) The actions described in subsection (a) are examples and are not intended to limit in any way the scope or types of actions that the InTRAC may take in pursuit of its purposes.

SECTION 30. IC 8-1-2.8-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 21. The InTRAC shall do the following:

(1) Establish, implement, and administer, in whole or in part, a statewide dual party relay service system. Any contract for the supply or operation of a dual party relay service system or for the supply of telecommunications devices shall be provided through a competitively selected vendor.

(2) Determine the terms and manner in which each LEC shall pay to the InTRAC the surcharge required under this chapter.

(3) Annually review the costs it incurred during prior periods, make reasonable projections of anticipated funding requirements for future periods, and file a report of the results of the review and projections with the commission by May 1 of each year.

(4) Annually employ an independent accounting firm to prepare audited financial statements for the end of each fiscal year of the InTRAC to consist of:

(A) a balance sheet;

(B) a statement of income; and

(C) a statement of cash flow;

and file a copy of these financial statements with the commission before May 2 of each year.

(5) Enter into contracts with any ~~telephone company~~ **authorized by the commission to provide services within Indiana LEC** to provide dual party relay services for the ~~telephone company~~ **LEC**, upon request by the ~~telephone company~~ **LEC**. However, the InTRAC:

(A) shall require reasonable compensation from the ~~telephone company~~ **LEC** for the provision of these services;

(B) is not required to contract with its members; and

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(C) shall provide dual party relay services to InTRAC members for no consideration other than the payment to the InTRAC of the surcharges collected by the member under this chapter.

(6) Send to each of its members and file with the governor and the general assembly before May 2 of each year an annual report that contains the following:

(A) A description of the InTRAC's activities for the previous fiscal year.

(B) A description and evaluation of the dual party relay services that the InTRAC provides.

(C) A report of the volume of services the InTRAC provided during the previous fiscal year.

(D) A copy of the financial statements that subdivision (4) requires.

A report filed under this subdivision with the general assembly must be in an electronic format under IC 5-14-6.

SECTION 31. IC 8-1-2.8-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 22. If:

(1) a ~~telephone company~~ **communications service provider (as defined in IC 8-1-32.6-6)** that is not a member of InTRAC originates, carries, or terminates, in whole or in part, any telecommunication message that uses the InTRAC's dual party relay services; and

(2) refuses to:

(A) enter into a contract with the InTRAC as provided in section 21(5) of this chapter; or

(B) pay any sums due under such a contract;

the InTRAC may apply to the commission for an order requiring just and reasonable payments or the payments that are due under the contract. The InTRAC may enforce this order in the courts of the state.

SECTION 32. IC 8-1-2.8-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 25. The following are not liable in any civil action for any injuries or loss to persons or property incurred by any person as a result of any act or omission of any person or entity listed in subdivisions (1) through (3) in connection with the development, adoption, implementation, maintenance, or operation of any system that provides dual party relay services or telecommunications devices, except for injuries or losses incurred as a result of willful or wanton misconduct:

(1) The InTRAC.

(2) A ~~telephone company~~ **LEC** providing dual party relay

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services.

(3) An employee, a director, an officer, or an agent of an entity listed in subdivision (1) or (2).

SECTION 33. IC 8-1-19.5-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 14. (a) Notwithstanding IC 8-1-2.6, the commission may retain:**

(1) jurisdiction over the rates, charges, and service quality of 211 services provided by telecommunications service providers; and

(2) the authority to fulfill the commission's duties under this chapter.

(b) The commission may not impose a rule concerning the service quality of 211 services provided by a telecommunications service provider unless the rule is imposed equally and uniformly on all telecommunications service providers.

(c) Upon a petition by:

(1) a telecommunications service provider; or

(2) a recognized 211 services provider;

the commission may formally or informally investigate a telecommunications service provider's rates and charges to determine whether the rates and charges are just and reasonable. For purposes of this section, a rate is considered reasonable if the rate covers the telecommunications service provider's costs and allows a reasonable profit.

SECTION 34. IC 8-1-29.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

**Chapter 29.5. Enforcement Remedies for Prohibited Actions by Telecommunications Service Providers**

**Sec. 1. This chapter applies to a provider that is:**

(1) exempt from commission jurisdiction in one (1) or more exchange areas in Indiana under IC 8-1-2.6-1.3(b);

(2) exempt from commission jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5; or

(3) subject to the terms and conditions of a settlement agreement approved by the commission under IC 8-1-2.6 before July 29, 2004.

**Sec. 2. Except as otherwise provided, the definitions in IC 8-1-2.6 apply throughout this chapter.**

**Sec. 3. As used in this chapter, "account" refers to the commission public utility fund account established under IC 8-1-6.**

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1       **Sec. 4.** As used in this chapter, "commission" refers to the  
 2       Indiana utility regulatory commission created by IC 8-1-1-2.

3       **Sec. 5.** As used in this chapter, "customer", with respect to a  
 4       provider, refers to any of the following:

5       (1) A residential customer.

6       (2) A business customer.

7       (3) Another provider that obtains retail or wholesale services  
 8       from the provider.

9       **Sec. 6. (a)** A provider may not do any of the following:

10       (1) With respect to any service provided at the retail or  
 11       wholesale level, establish a rate, term, or condition that is  
 12       anticompetitive or unreasonably preferential, prejudicial, or  
 13       discriminatory. For purposes of this subdivision, the following  
 14       apply:

15       (A) A rate, term, or condition for retail service is  
 16       unreasonably preferential, prejudicial, or discriminatory  
 17       if the rate, term, or condition:

18       (i) is not offered uniformly to all comparably situated  
 19       customers in a metropolitan statistical area; or

20       (ii) violates IC 8-1-2-103(a) or IC 8-1-2-105, to the extent  
 21       the provider is subject to IC 8-1-2-103(a) or  
 22       IC 8-1-2-105.

23       (B) A rate, term, or condition for services provided to  
 24       another provider may be anticompetitive, regardless of  
 25       whether the rate, term, or condition constitutes a breach  
 26       of:

27       (i) the access, interconnection, or resale obligations of the  
 28       provider under 47 U.S.C. 251; or

29       (ii) an agreement negotiated under 47 U.S.C. 252 with  
 30       respect to any request by another provider for  
 31       interconnection, services, or access to network elements.

32       (2) With respect to basic or nonbasic telecommunications  
 33       service offered by the provider in an unregulated exchange  
 34       area, establish a rate that is subsidized either directly or  
 35       indirectly by another service for which rates are regulated by  
 36       the commission.

37       (3) Engage in predatory pricing, or attempt to engage in  
 38       predatory pricing, for any service provided at the wholesale  
 39       or retail level. For purposes of this subdivision, a rate is  
 40       considered predatory if, for purposes of reporting to taxing  
 41       authorities, a service is not set at or above the service's long  
 42       run incremental cost.

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(b) The commission may do any of the following:

(1) Establish service quality rules or performance standards for services provided by an incumbent local exchange carrier to a customer described in section 5(3) of this chapter.

(2) Require a provider to report to the commission, not more often than quarterly, service quality goals and performance data for any service offered by the provider at the retail or wholesale level. The commission shall make any information or data submitted under this subsection available:

(A) for public inspection and copying at the offices of the commission under IC 5-14-3; and

(B) electronically through the computer gateway administered by the office of technology established by IC 4-13.1-2-1;

to the extent the information or data are not exempt from public disclosure under IC 5-14-3-4(a). However, this subdivision does not empower the commission to require a provider to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this subdivision.

(c) The commission may condition any of the following on a provider's compliance with this section:

(1) An exemption from the commission's jurisdiction in one (1) or more exchange areas under IC 8-1-2.6-1.3(b).

(2) An exemption from the commission's jurisdiction under IC 8-1-2-88.5 or IC 8-1-17-22.5.

(3) The continuation of any relaxed or alternative regulatory requirements available under a settlement agreement approved by the commission under IC 8-1-2.6 before July 29, 2004.

Sec. 7. (a) Upon:

(1) a complaint filed by:

(A) one (1) or more customers of a provider;

(B) another provider;

(C) the utility consumer counselor; or

(D) any class satisfying the standing requirements of IC 8-1-2-54; or

(2) the commission's own motion;

the commission may investigate whether a provider has violated section 6 of this chapter. The commission shall conduct a review

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under this section on an expedited basis, and a complaint filed by another provider under this section that alleges a violation of an interconnection agreement or order is subject to the commission's expedited procedures under 170 IAC 7-7. For purposes of this section, a violation of section 6 of this chapter includes a violation of a rule or standard adopted by the commission under section 6(b)(1) of this chapter.

(b) If, after notice and an opportunity for hearing, the commission determines from an investigation conducted under subsection (a) that a provider has violated section 6 of this chapter, the commission may do any of the following:

(1) Issue an order directing the provider to cease and desist from violating section 6 of this chapter.

(2) Mandate corrective action to alleviate the violation.

(3) Revoke or modify the terms of:

(A) an indeterminate permit;

(B) a certificate of territorial authority; or

(C) another license or authorization;

issued to the provider by the commission.

(4) Impose a civil penalty of not more than ten thousand dollars (\$10,000) per violation, if the violation involves any of the following:

(A) Predatory pricing by the provider, as described in section 6(a)(3) of this chapter.

(B) A failure to:

(i) comply with a service quality rule or performance standard adopted by the commission under section 6(b)(1) of this chapter; or

(ii) make significant progress in achieving a service quality goal reported by the provider under section 6(b)(2) of this chapter;

if the failure demonstrates, by a continuing pattern of conduct, a willful disregard by the provider of its obligation to remedy the failure after the provider becomes aware of the failure.

(C) Repeated errors in bills issued to one (1) or more customer classes, if the errors:

(i) represent intentional misconduct or an act of fraud by the provider or by any officer, accountant, or agent of the provider; or

(ii) demonstrate, by a continuing pattern of conduct, a willful disregard by the provider of its obligation to

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remedy the errors after the provider becomes aware of the errors.

Subject to section 8(a)(1) of this chapter, for purposes of this subdivision, a single act, omission, occurrence, or event that results in multiple complaints being filed under subsection (a)(1) constitutes a single violation and is not subject to more than one (1) civil penalty. The commission may not consider each day that a particular violation continues to be a separate violation.

(c) A matter resolved through voluntary mediation is not considered a violation for purposes of this section.

(d) A provider may not be subject to both:

(1) a civil penalty or order of the commission under this section; and

(2) a penalty or remedy agreed to in a commission approved settlement agreement;

for the same violation. If the commission has approved a settlement agreement under IC 8-1-2.6 that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, the penalties or remedies provided in this section do not apply to those instances of noncompliance during the life of the settlement agreement.

(e) The attorney general may bring an action in the name of the state to enforce any action taken by the commission under subsection (b), including the collection of an unpaid civil penalty imposed by the commission.

(f) The following are subject to appeal by a provider under IC 8-1-3:

(1) A determination by the commission under this section that a provider has violated section 6 of this chapter.

(2) The appropriateness of any action taken by the commission under subsection (b)(1) through (b)(3).

(3) The appropriateness of:

(A) the imposition of a civil penalty by the commission under subsection (b)(4); or

(B) the amount of the penalty imposed.

Upon the motion of a provider, the commission shall stay the effect or enforceability of an order or penalty under this section pending an appeal, subject to the provider posting a bond that complies with Rule 18 of the Indiana Rules of Appellate Procedure.

Sec. 8. (a) In imposing a civil penalty under section 7(b)(4) of this chapter, the commission may consider the following factors:

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(1) The duration and gravity of the violation, including the number of customers affected.

(2) The presence or absence of due diligence on the part of the violating provider to comply with or secure relief from section 6 of this chapter.

(3) Economic benefits accrued by the violating provider because of the delay in complying with section 6 of this chapter.

(4) The amount of a civil penalty that will:

(A) deter future violations by the violating provider; and

(B) enhance voluntary compliance with section 6 of this chapter.

(5) The market share of the violating provider in the affected service areas.

(6) Good faith of the violating provider in attempting to remedy the violation or to achieve compliance after receiving notification of the violation.

(b) If the commission waives a civil penalty for a violation involving any act or omission described in section 7(b)(4) of this chapter, the commission must make a written finding as to why it is waiving the civil penalty. The commission may waive a civil penalty under section 7(b)(4) of this chapter if the commission finds that the violation is the result of any of the following:

(1) The technological infeasibility of:

(A) complying with the requirements of section 6 of this chapter; or

(B) remedying a violation of section 6 of this chapter.

(2) An act of God.

(3) A defect in, or prohibited use of, customer provided equipment.

(4) A negligent act of a customer.

(5) An emergency situation.

(6) Unavoidable casualty.

(c) The secretary of the commission shall direct a civil penalty imposed and collected under section 7(b)(4) of this chapter as follows:

(1) A civil penalty imposed for a violation that directly affects retail customers must be refunded directly to the customers of the violating provider in the form of credits on customer bills.

(2) A civil penalty imposed for a violation that directly harms another provider must be awarded directly to the provider.

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(3) A civil penalty imposed for a violation not described in subdivision (1) or (2) must be deposited into an account designated by the Indiana finance authority for use by the authority in making loans or grants to broadband developers and operators under the Indiana broadband development program established by IC 8-1-33-15.

SECTION 35. IC 8-1-32.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 32.6. Access to Real Property by Communications Service Providers**

**Sec. 1.** This chapter applies to a communications service provider that holds:

- (1) a municipal franchise;
- (2) an indeterminate permit;
- (3) a certificate of territorial authority; or
- (4) another lawfully issued license or authorization;

to provide communications service in one (1) or more service areas in Indiana.

**Sec. 2.** As used in this chapter, "affiliate" has the meaning set forth in IC 23-1-43-1. The term includes a parent company or a subsidiary.

**Sec. 3.** As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

**Sec. 4. (a)** As used in this chapter, "communications service" refers to any of the following:

- (1) Telecommunications service (as defined in 47 U.S.C. 153(46)).
- (2) Information service (as defined in 47 U.S.C. 153(20)).

**(b)** The term includes:

- (1) video service;
- (2) broadband service;
- (3) advanced services (as defined in 47 CFR 51.5); and
- (4) Internet Protocol enabled services;

however classified by the Federal Communications Commission.

**Sec. 5.** As used in this chapter, "communications service equipment" refers to facilities or equipment:

- (1) installed on private or publicly owned real property; and
- (2) used to provide communications service to the premises.

**Sec. 6.** As used in this chapter, "communications service provider" means a person or an entity, or an affiliate of a person or an entity, that offers communications service to customers in

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1 Indiana, without regard to the technology or medium used by the  
2 person or entity to provide the communications service.

3 Sec. 7. As used in this chapter, "local exchange service" means  
4 the provision of telephone exchange service (as defined in 47 U.S.C.  
5 153(47)) or exchange access (as defined in 47 U.S.C. 153(16)).

6 Sec. 8. As used in this section, "multitenant real estate" means  
7 any:

- 8 (1) geographic area;
- 9 (2) building; or
- 10 (3) group of buildings;

11 containing more than one (1) unit for business or residential  
12 purposes. The term includes apartment buildings, condominiums,  
13 subdivisions, office buildings, and office parks.

14 Sec. 9. As used in this chapter, "occupant" refers to an  
15 occupant, a tenant, or a resident of multitenant real estate.

16 Sec. 10. As used in this chapter, "person" means an individual,  
17 a corporation, a limited liability company, a partnership, an  
18 unincorporated association, or a governmental entity.

19 Sec. 11. As used in this chapter, "provider of last resort" means  
20 a communications service provider that:

- 21 (1) holds:
  - 22 (A) an indeterminate permit;
  - 23 (B) a certificate of territorial authority; or
  - 24 (C) another license or authorization;
- 25 issued by the commission; and
- 26 (2) is required to offer local exchange service throughout a  
27 defined geographic area.

28 Sec. 12. As used in this chapter, "unit" has the meaning set forth  
29 in IC 36-1-2-23.

30 Sec. 13. As used in this chapter, "video service" means:

- 31 (1) the transmission to subscribers of:
  - 32 (A) video programming (as defined in 47 U.S.C. 522(20));
  - 33 and
  - 34 (B) other programming service that consists of information
  - 35 that a communications service provider makes available to
  - 36 all subscribers generally;
- 37 without regard to the technology used to deliver the video
- 38 programming or other programming service; and
- 39 (2) any subscriber interaction required for the selection or use
- 40 of the video programming or other programming service.

41 Sec. 14. (a) A communications service provider shall not enter  
42 into any contract, agreement, or other arrangement that does any

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of the following:

(1) Requires any person to restrict or limit:

(A) the ability of another communications service provider to obtain easements or rights-of-way for the installation of communications service equipment used to provide communications service to Indiana customers; or

(B) access to real property by another communications service provider.

(2) Offers or grants incentives or rewards to an owner of real property if the incentives or rewards are contingent upon the property owner's agreement to restrict or limit:

(A) the ability of another communications service provider to obtain easements or rights-of-way for the installation of communications service equipment on the property; or

(B) access to the owner's real property by another communications service provider.

A contract, an agreement, or any other arrangement that violates this section is void.

(b) This section does not prohibit a communications service provider and a subscriber from entering into any lawful contract, agreement, or other arrangement concerning the communications service offered by the communications service provider to the subscriber.

(c) The commission may investigate whether a communications service provider has violated this section. The commission may initiate an investigation under this subsection upon:

(1) a complaint filed by:

(A) another communications service provider;

(B) a subscriber or potential subscriber of the communications service provider;

(C) a unit in which:

(i) the communications service provider holds a municipal franchise; and

(ii) the alleged violation occurred;

(D) the utility consumer counselor; or

(E) any class satisfying the standing requirements of IC 8-1-2-54; or

(2) the commission's own motion.

(d) If, after notice and an opportunity for hearing, the commission determines from an investigation conducted under subsection (c) that a communications service provider has violated this section, the commission may do any of the following:

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(1) Issue an order directing the communications service provider to cease and desist from violating this section.

(2) Mandate corrective action to alleviate the violation.

(3) Revoke or modify the terms of:

(A) an indeterminate permit;

(B) a certificate of territorial authority; or

(C) another license or authorization;

issued to the communications service provider by the commission.

(4) Recommend that a unit revoke or modify the terms of:

(A) a municipal franchise; or

(B) another license or authorization;

issued to the communications service provider by the unit.

(5) Impose a civil penalty of not more than ten thousand dollars (\$10,000) per violation. For purposes of this subdivision, each contract, agreement, or arrangement that violates this section is subject to a separate penalty. However, the commission may not consider each day that a prohibited contract, agreement, or arrangement remains in effect to be a separate violation.

(e) The attorney general may bring an action in the name of the state to enforce any action taken by the commission under subsection (d), including the collection of an unpaid civil penalty imposed by the commission.

(f) The secretary of the commission shall deposit civil penalties collected under this section into an account designated by the Indiana finance authority for use by the authority in making loans or grants to broadband developers and operators under the Indiana broadband development program established by IC 8-1-33-15.

(g) The following are subject to appeal by a communications service provider under IC 8-1-3:

(1) A determination by the commission under subsection (d) that a communications service provider has violated this section.

(2) The appropriateness of any action taken by the commission under subsection (d)(1) through (d)(4).

(3) The appropriateness of:

(A) the imposition of a civil penalty by the commission under subsection (d)(5); or

(B) the amount of the penalty imposed.

Upon the motion of a communications service provider, the

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commission shall stay the effect or enforceability of an order or penalty under this section pending an appeal, subject to the communications service provider posting a bond that complies with Rule 18 of the Indiana Rules of Appellate Procedure.

Sec. 15. (a) Except as provided in subsection (b), the owner, operator, or developer of multitenant real estate located in a service area in which one (1) or more communications service providers are authorized to provide communications service may not do any of the following:

(1) Prevent a communications service provider from installing on the premises communications service equipment that an occupant requests.

(2) Interfere with a communications service provider's installation on the premises of communications service equipment that an occupant requests.

(3) Discriminate against a communications service provider or impose unduly burdensome conditions on the terms, conditions, and compensation for a communications service provider's installation of communications service equipment on the premises.

(4) Demand or accept an unreasonable payment from:

(A) an occupant; or

(B) a communications service provider;

in exchange for allowing the communications service provider access to the premises.

(5) Discriminate against or in favor of an occupant in any manner, including by charging higher or lower rental charges to the occupant, because of the communications service provider from which the occupant receives communications service.

(b) This section does not prohibit the owner, operator, or developer of multitenant real estate from doing any of the following:

(1) Imposing a condition on a communications service provider that is reasonably necessary to protect:

(A) the safety, security, appearance, or condition of the property; or

(B) the safety and convenience of other persons.

(2) Imposing a reasonable limitation on the hours during which a communications service provider may have access to the premises to install communications service equipment.

(3) Imposing a reasonable limitation on the number of

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communications service providers that have access to the premises, if the owner, operator, or developer can demonstrate a space constraint that requires the limitation.

(4) Requiring a communications service provider to agree to indemnify the owner, operator, or developer for damage caused by installing, operating, or removing communications service equipment on or from the premises.

(5) Requiring an occupant or a communications service provider to bear the entire cost of installing, operating, or removing communications service equipment.

(6) Requiring a communications service provider to pay compensation for access to or use of the premises, as long as the compensation is:

(A) reasonable; and

(B) nondiscriminatory;

among communications service providers.

(c) For purposes of this subsection, an "affected person" includes the following:

(1) An occupant that is a current or potential subscriber of communications service on the premises of multitenant real estate.

(2) A unit in which multitenant real estate is located, acting on behalf of:

(A) a person described in subdivision (1); or

(B) other similarly situated persons.

(3) A communications service provider.

An affected person that alleges a violation of this section by the owner, operator, or developer of multitenant real estate may seek equitable or compensatory relief in a court having jurisdiction. The party prevailing in any action filed under this section is entitled to recover the costs of the action, including reasonable attorney's fees as determined by the court.

Sec. 16 (a) The commission may not require a communications service provider, including a provider of last resort, to provide any communications service to the occupants of multitenant real estate if the owner, operator, or developer of the multitenant real estate does any of the following to the benefit of another communications service provider:

(1) Permits only one (1) communications service provider to install the provider's facilities or equipment during the construction or development phase of the multitenant real estate.

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(2) Accepts or agrees to accept incentives or rewards that:

(A) are offered by a communications service provider to the owner, operator, developer, or occupants of the multitenant real estate; and

(B) are contingent upon the provision of communications service by that provider to the occupants of the multitenant real estate, to the exclusion of any services provided by other communications service providers.

(3) Collects from the occupants of the multitenant real estate any charges for the provision of communications service to the occupants, including charges collected through rent, fees, or dues.

(4) Enters into an agreement with a communications service provider that is prohibited by section 14 of this chapter.

(b) This subsection applies to a communications service provider that is relieved under subsection (a) of an obligation to provide communications service to the occupants of multitenant real estate. This section does not prohibit the communications service provider from voluntarily offering service to the occupants of the multitenant real estate. However, the commission shall not exercise jurisdiction over the terms, conditions, rates, or availability of any communications service voluntarily offered by a communications service provider under this subsection.

Sec. 17. The commission may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 36. IC 8-1-34 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

#### **Chapter 34. Video Service Franchises**

Sec. 1. As used in this chapter, "affiliate" has the meaning set forth in IC 23-1-43-1. The term includes a parent company or a subsidiary.

Sec. 2. As used in this chapter, "certificate" refers to a certificate of franchise authority issued by the commission under section 17 of this chapter.

Sec. 3. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

Sec. 4. As used in this chapter, "franchise" means an initial authorization, or a renewal of an authorization, that:

(1) is issued by the commission under this chapter after June 30, 2006; and

(2) authorizes the construction or operation of a video service

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1 system in a designated service area in Indiana.

2 Sec. 5. As used in this chapter, "gross revenue" means all  
3 consideration of any kind or nature, including cash, credits,  
4 property, and in kind contributions:

5 (1) received by a holder from the operation of a video service  
6 system in a particular unit in Indiana; and

7 (2) calculated by the holder under section 23 of this chapter.

8 Sec. 6. As used in this chapter, "holder" refers to a person that  
9 holds a certificate issued by the commission under this chapter  
10 after June 30, 2006.

11 Sec. 7. As used in this chapter, "incumbent provider" means the  
12 provider serving the largest number of video service subscribers in  
13 a particular local franchise service area on July 1, 2006.

14 Sec. 8. As used in this chapter, "local franchise" means an initial  
15 authorization, or a renewal of an authorization, that:

16 (1) is issued by a unit before July 1, 2006; and

17 (2) authorizes the construction or operation of a video service  
18 system in a designated service area in the unit.

19 Sec. 9. As used in this chapter, "other programming service"  
20 refers to information that a provider makes available to all  
21 subscribers generally.

22 Sec. 10. As used in this chapter, "person" means an individual,  
23 a corporation, a partnership, a limited liability company, an  
24 association, or another entity organized under the laws of any  
25 state.

26 Sec. 11. As used in this chapter, "provider" refers to a  
27 multichannel video programming distributor (as defined in 47  
28 U.S.C. 522(13)).

29 Sec. 12. As used in this chapter, "unit" has the meaning set forth  
30 in IC 36-1-2-23.

31 Sec. 13. As used in this chapter, "video programming" has the  
32 meaning set forth in 47 U.S.C. 522(20).

33 Sec. 14. As used in this chapter, "video service" means:

34 (1) the transmission to subscribers of video programming and  
35 other programming service:

36 (A) through facilities located at least in part in a public  
37 right-of-way; and

38 (B) without regard to the technology used to deliver the  
39 video programming or other programming service; and

40 (2) any subscriber interaction required for the selection or use  
41 of the video programming or other programming service.

42 Sec. 15. (a) As used in this chapter, "video service system"

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means a system, consisting of a set of transmission paths and associated signal generation, reception, and control equipment, that is designed to provide video service directly to subscribers within a community. The term includes the:

- (1) optical spectrum wavelengths;
- (2) bandwidth; or
- (3) other current or future technological capacity;

used to provide the video service.

(b) The term does not include a system that transmits video service to subscribers without using any public right-of-way.

Sec. 16. (a) Except as provided in section 21 of this chapter, after June 30, 2006:

- (1) the commission is the sole franchising authority (as defined in 47 U.S.C. 522(10)) for the provision of video service in Indiana; and
- (2) a unit may not:

- (A) require a provider to obtain a separate franchise; or
- (B) impose any fee, gross receipt tax, licensing requirement, rate regulation, or build-out requirement on a provider;

except as authorized by this chapter.

(b) Except as provided in section 21 of this chapter, a person that seeks to provide video service in Indiana after June 30, 2006, shall file with the commission an application for a franchise. The application shall be made on a form prescribed by the commission and must include the following:

- (1) A sworn affidavit, signed by an officer or another person authorized to bind the applicant, that affirms the following:
  - (A) That the applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering video service in Indiana.
  - (B) That the applicant agrees to comply with all federal and state statutes, rules, and regulations applicable to the operation of the applicant's video service system.
  - (C) That the applicant agrees to:
    - (i) comply with any local ordinance or regulation governing the use of public rights-of-way in the delivery of video service; and
    - (ii) recognize the police powers of a unit to enforce the ordinance or regulation.
  - (D) If the applicant will terminate an existing local

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franchise under section 21 of this chapter, that the applicant agrees to perform any obligations owed to any private person under the terminated franchise until such time as the local franchise would otherwise terminate or expire, as required by section 22 of this chapter.

(2) The applicant's legal name and any name under which the applicant does or will do business in Indiana, as authorized by the secretary of state.

(3) The address and telephone number of the applicant's principal place of business, along with contact information for the person responsible for ongoing communications with the commission.

(4) The names and titles of the applicant's principal officers.

(5) The legal name, address, and telephone number of the applicant's parent company, if any.

(6) A description of each service area in Indiana to be served by the applicant. A service area described under this subdivision may include an unincorporated area in Indiana.

(7) The expected date for the deployment of video service in each of the areas identified in subdivision (6).

(8) A list of other states in which the applicant provides video service.

(9) If the applicant will terminate an existing local franchise under section 21(b) of this chapter, a copy of the written notice sent to the municipality under section 21(c) of this chapter.

(10) Any other information the commission considers necessary to:

(A) monitor the provision of video service to Indiana customers; and

(B) prepare the commission's annual report to the regulatory flexibility committee under IC 8-1-2.6-4.

This subsection does not empower the commission to require an applicant to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this subsection.

Sec. 17. (a) Not later than fifteen (15) business days after the commission receives an application under section 16 of this chapter, the commission shall determine whether the application is complete and properly verified. If the commission determines

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that the application is incomplete or is not properly verified, the commission shall notify the applicant of the deficiency and allow the applicant to resubmit the application after correcting the deficiency. If the commission determines that the application is complete and properly verified, the commission shall issue the applicant a certificate of franchise authority. A certificate issued under this section must contain:

(1) a grant of authority to provide the video service requested in the application;

(2) a grant of authority to use and occupy public rights-of-way in the delivery of the video service, subject to:

(A) state and local laws and regulations governing the use and occupancy of public rights-of-way; and

(B) the police powers of local units to enforce local ordinances and regulations governing the use and occupancy of public rights-of-way; and

(3) a statement that the authority granted under subdivisions (1) and (2) is subject to the holder's lawful provision and operation of the video service.

(b) Except as provided in subsection (c) and section 28 of this chapter, the commission may not require a provider to:

(1) satisfy any build-out requirements; or

(2) deploy, or make investments in, any infrastructure, facilities, or equipment;

as a condition of receiving or holding a certificate under this chapter.

(c) This section does not limit the commission's right to enforce any obligation described in subsection (b) that a provider is subject to under the terms of a settlement agreement approved by the commission before July 29, 2004.

(d) The general assembly, a state agency, or a unit may not adopt a law, rule, ordinance, or regulation governing the use and occupancy of public rights-of-way that:

(1) discriminates against any provider, or is unduly burdensome with respect to any provider, based on the particular facilities or technology used by the provider to deliver video service; or

(2) allows a video service system owned or operated by a unit to use or occupy public rights-of-way on terms or conditions more favorable or less burdensome than those that apply to other providers.

A law, a rule, an ordinance, or a regulation that violates this

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1 subsection is void.

2       **Sec. 18.** Subject to the notice requirements under section 20 of  
3 this chapter, a certificate issued under this chapter may be  
4 transferred to any successor in interest of the holder to which the  
5 certificate is originally granted.

6       **Sec. 19.** A certificate issued under this chapter may be  
7 terminated by the holder by submitting notice to the commission  
8 under section 20 of this chapter.

9       **Sec. 20. (a)** In connection with, or as a condition of receiving, a  
10 certificate under this chapter, the commission shall require a  
11 holder to notify the commission, after the issuance of a certificate,  
12 of any of the following changes involving the holder or the  
13 certificate issued:

14           (1) Any transaction involving a change in the ownership,  
15 operation, control, or corporate organization of the holder,  
16 including a merger, acquisition, or reorganization.

17           (2) A change in the holder's legal name or the adoption of, or  
18 change to, an assumed business name. The holder shall submit  
19 to the commission a certified copy of the:

20               (A) amended certificate of authority; or

21               (B) certificate of assumed business name;

22           issued by the secretary of state to reflect the change.

23           (3) A change in the holder's principal business address or in  
24 the name of the person authorized to receive notice on behalf  
25 of the holder.

26           (4) Any transfer of the certificate to a successor in interest of  
27 the holder allowed by section 18 of this chapter. The holder  
28 shall identify the successor in interest to which the transfer is  
29 made.

30           (5) The termination of any certificate issued under this  
31 chapter, as allowed by section 19 of this chapter. The holder  
32 shall identify:

33               (A) any other certificate issued under this chapter that will  
34 be retained by the holder;

35               (B) the number of Indiana customers in the service area  
36 covered by the certificate being terminated; and

37               (C) the method by which the holder's customers were  
38 notified of the termination, if required by the commission  
39 under subsection (c).

40           (6) A change in the video programming or other  
41 programming service provided in one (1) or more of the  
42 services areas identified under section 16(b)(6) of this chapter

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in the holder's most recent application for a certificate under this chapter.

(7) A change in one (1) or more of the service areas identified under section 16(b)(6) of this chapter that would increase or decrease the territory within the service area. The holder shall describe the new boundaries of the affected service areas after the proposed change is made.

The commission shall prescribe the time in which a holder must report changes under this section. The commission may prescribe a form for the reporting of changes under this section.

(b) In connection with, or as a condition of receiving, a certificate under this chapter, the commission shall require a holder to notify a unit:

(1) in which the holder does not already provide video service under:

(A) a local franchise issued by the unit before July 1, 2006;

or

(B) another certificate issued under this chapter after June 30, 2006; and

(2) that is included in the holder's service area under the certificate being issued;

that the holder intends to provide video service in the unit's jurisdiction. The holder shall give the notice required under this subdivision not later than ten (10) days before the holder begins providing video service in the unit's jurisdiction.

(c) In connection with the issuance of a certificate under this chapter, the commission may require a holder to provide advance notice to the holder's Indiana customers if the holder will do any of the following:

(1) Change the rates and charges for video service that the holder offers in any of its service areas in Indiana.

(2) Cease to offer video service, or any specific video programming or other programming service, that the holder currently offers in any of the holder's service areas in Indiana.

The commission shall prescribe any customer notification requirements under this subsection in a rule of general application adopted under IC 4-22-2.

Sec. 21. (a) For purposes of this section, a provider is considered to be a holder of a local franchise on June 30, 2006, if:

(1) the provider; or

(2) any affiliate or successor entity of the provider;

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holds a local franchise to provide video service in a unit on June 30, 2006.

(b) After June 30, 2006, a provider that is the holder of a local franchise on June 30, 2006, regardless of whether the provider is the incumbent provider in the local franchise service area, may elect to:

(1) continue providing video service under the local franchise until the local franchise expires; or

(2) subject to section 22 of this chapter, terminate the local franchise and apply to the commission for a certificate under this chapter.

(c) A provider that elects to terminate a local franchise under subsection (b) must provide written notice of the provider's election to:

(1) the commission; and

(2) the affected unit;

not later than November 1, 2006. The local franchise is terminated on the date the commission issues a certificate to the provider under this chapter.

(d) Not later than ninety (90) days after a local franchise is terminated under subsection (c), the provider that terminated the local franchise shall remit to the affected unit any accrued but unpaid franchise fees due under the local franchise. If the provider has credit remaining from any prepaid franchise fees, the provider may deduct the amount of the credit from any future fees or taxes owed to the affected unit.

Sec. 22. (a) A provider that elects to terminate a local franchise under section 21 of this chapter remains subject to the contractual rights, duties, and obligations:

(1) incurred by the provider under the terms and conditions of the terminated local franchise; and

(2) owed to any private person, including a subscriber.

(b) The obligations that a provider owes to a private person under subsection (a) include any obligations based on the gross income received by the provider:

(1) after the provider becomes a holder of a certificate under this chapter; and

(2) for video service provided in the service area covered by the terminated local franchise;

if, under the terms of the terminated local franchise, the obligations would have been based on the gross income received by the provider for video service provided in the service area covered

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by the terminated local franchise.

(c) All liens, security interests, royalties, and other contracts, rights, and interests arising out of the terminated local franchise and owed to a private person, shall:

(1) continue in full force and effect without the need for renewal, extension, or continuance;

(2) be paid or performed by the provider after becoming a holder of a certificate under this chapter; and

(3) apply as though the gross revenue of the provider continued to be generated under the terminated local franchise with respect to any revenue generated in the service area covered by the terminated local franchise.

(d) The commission shall condition the issuance or renewal of a certificate under this chapter on a provider's payment and performance of the rights, duties, and obligations described in this section until such time as the terminated local franchise would ordinarily terminate or expire if the provider had not made the election under section 21 of this chapter. In applying for an initial certificate or a renewal certificate under this chapter, a provider shall agree to pay or perform the obligations described in this section, as required by section 16(b)(1)(D) of this chapter.

(e) A private person that claims to be:

(1) owed any rights, duties, or obligations by a holder under this section; and

(2) aggrieved by a holder's alleged violation of this section; may bring an action in a court with jurisdiction to enforce the rights, duties, or obligations claimed to be owed to the person.

Sec. 23. (a) At the end of each calendar quarter, the holder of a certificate under this chapter shall determine the gross revenue received during that quarter from the holder's provision of video service in each unit included in the holder's service area under the certificate. A provider that elects under section 21(b)(1) of this chapter to continue providing video service under a local franchise is not required to determine gross revenue under this section, except to the extent that any calculation of gross revenue is required under the terms of the local franchise.

(b) The holder shall include the following in determining the gross revenue received during the quarter with respect to a particular unit:

(1) Fees and charges charged to subscribers for video service provided by the holder. Fees and charges under this subdivision include the following:

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- 1 (A) Recurring monthly charges for video service.
- 2 (B) Event based charges for video service, including pay
- 3 per view and video on demand charges.
- 4 (C) Charges for the rental of set top boxes and other
- 5 equipment.
- 6 (D) Service charges related to the provision of video
- 7 service, including activation, installation, repair, and
- 8 maintenance charges.
- 9 (E) Administrative charges related to the provision of
- 10 video service, including service order and service
- 11 termination charges.
- 12 (2) Revenue received by an affiliate of the holder from the
- 13 affiliate's provision of video service, to the extent that treating
- 14 the revenue as revenue of the affiliate, instead of revenue of
- 15 the holder, would have the effect of evading the payment of
- 16 fees that would otherwise be paid to the unit. However,
- 17 revenue of an affiliate may not be considered revenue of the
- 18 holder if the revenue is otherwise subject to fees to be paid to
- 19 the unit.
- 20 (c) The holder shall not include the following in determining the
- 21 gross revenue received during the quarter with respect to a
- 22 particular unit:
- 23 (1) Revenue not actually received, regardless of whether it is
- 24 billed. Revenue described in this subdivision includes bad
- 25 debt.
- 26 (2) Revenue received by an affiliate or any other person in
- 27 exchange for supplying goods and services used by the holder
- 28 to provide video service under the holder's certificate.
- 29 (3) Refunds, rebates, or discounts made to subscribers,
- 30 advertisers, the unit, or other providers leasing access to the
- 31 holder's facilities.
- 32 (4) Revenue from providing service other than video service,
- 33 including revenue from providing:
- 34 (A) telecommunications service (as defined in 47 U.S.C.
- 35 153(46));
- 36 (B) information service (as defined in 47 U.S.C. 153(20)),
- 37 other than video service; or
- 38 (C) any other service not classified as cable service or video
- 39 programming by the Federal Communications
- 40 Commission.
- 41 (5) Any fee imposed on the holder under this chapter that is
- 42 passed through to and paid by subscribers, including the

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franchise fee:

(A) imposed under section 24 of this chapter for the quarter immediately preceding the quarter for which gross revenue is being computed; and

(B) passed through to and paid by subscribers during the quarter for which gross revenue is being computed.

(6) Revenue from the sale of video service for resale in which the purchaser collects a franchise fee under:

(A) this chapter; or

(B) a local franchise agreement in effect on July 1, 2006; from the purchaser's customers. This subdivision does not limit the authority of a unit, or the commission on behalf of a unit, to impose a tax, a fee, or another assessment upon the purchaser under 42 U.S.C. 542(h).

(7) Any tax of general applicability:

(A) imposed on the holder or on subscribers by a federal, state, or local governmental entity; and

(B) required to be collected by the holder and remitted to the taxing entity;

including the state gross retail and use taxes (IC 6-2.5) and the utility receipts tax (IC 6-2.3).

(8) Any forgone revenue from providing free or reduced cost cable video service to any person, including:

(A) employees of the holder;

(B) the unit; or

(C) public institutions, public schools, or other governmental entities, as required or permitted by this chapter or by federal law.

However, any revenue that the holder chooses to forgo in exchange for goods or services through a trade or barter arrangement shall be included in gross revenue.

(9) Revenue from the sale of:

(A) capital assets; or

(B) surplus equipment that is not used by the purchaser to receive video service from the holder.

(10) Reimbursements that:

(A) are made by programmers to the holder for marketing costs incurred by the holder for the introduction of new programming; and

(B) exceed the actual costs incurred by the holder.

(11) Late payment fees collected from customers.

(12) Charges, other than those described in subsection (b)(1),

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that are aggregated or bundled with charges described in subsection (b)(1) on a customer's bill, if the holder can reasonably identify the charges on the books and records by the holder in the regular course of business.

(d) If, under the terms of the holder's certificate, the holder provides video service to any unincorporated area in Indiana, the holder shall calculate the holder's gross income received from each unincorporated area served in accordance with subsections (b) and (c).

(e) If a unit served by the holder under a certificate annexes any territory after the certificate is issued or renewed under this chapter, the holder shall:

(1) include in the calculation of gross revenue for the annexing unit any revenue generated by the holder from providing video service to the annexed territory; and

(2) subtract from the calculation of gross income for any unit or unincorporated area:

(A) of which the annexed territory was formerly a part; and

(B) served by the holder before the effective date of the annexation;

the amount of gross revenue determined under subdivision (1);

beginning with the calculation of gross revenue for the calendar quarter in which the annexation becomes effective. The holder shall notify the commission of the new boundaries of the affected service areas as required under section 20(a)(7) of this chapter.

Sec. 24. (a) Subject to subsection (e), not later than forty-five (45) days after the end of each calendar quarter, the holder shall pay to each unit included in the holder's service area under a certificate issued under this chapter a franchise fee equal to:

(1) the amount of gross revenue received from providing video service in the unit during the most recent calendar quarter, as determined under section 23 of this chapter; multiplied by

(2) five percent (5%).

(b) If the holder provides video service to an unincorporated area in Indiana, as described in section 23(d) of this chapter, the holder shall:

(1) calculate the franchise fee with respect to the unincorporated area in accordance with subsection (a); and

(2) remit the franchise fee to the county in which the

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unincorporated area is located.

If an unincorporated area served by the provider is located in one (1) or more contiguous counties, the provider shall remit part of the franchise fee calculated under subdivision (1) to each county having territory in the unincorporated area served. The part of the franchise fee remitted to a county must bear the same proportion to the total franchise fee for the area, as calculated under subdivision (1), that the number of subscribers in the county bears to the total number of subscribers in the unincorporated area served.

(c) With each payment of a franchise fee to a unit under this section, the holder shall include a statement explaining the basis for the calculation of the franchise fee. A unit may review the books and records of:

(1) the holder; or

(2) an affiliate of the holder, if appropriate;

to the extent necessary to ensure the holder's compliance with section 23 of this chapter in calculating the gross revenue upon which the remitted franchise fee is based. Each party shall bear the party's own costs of an examination under this subsection. If the holder and the unit cannot agree on the amount of gross revenue on which the franchise fee should be based, either party may petition the commission to determine the amount of gross revenue on which the franchise fee should be based. A determination of the commission under this subsection is final, subject to the right of direct appeal by either party.

(d) A franchise fee owed by a holder to a unit under this section may be passed through to, and collected from, the holder's subscribers in the unit. To the extent allowed under 43 U.S.C. 542(c), the holder may identify as a separate line item on each regular bill issued to a subscriber:

(1) the amount of the total bill assessed as a franchise fee under this section; and

(2) the identity of the unit to which the franchise fee is paid.

(e) A holder that elects under section 21(b)(1) of this chapter to continue providing video service under a local franchise is not required to pay the franchise fee prescribed under this section, but shall pay any franchise fee imposed under the terms of the local franchise.

Sec. 25. (a) This section applies in a unit that:

(1) is included in the service area of a holder of a certificate issued under this chapter; and

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(2) requires a provider described in section 21(a) of this chapter to provide PEG channel capacity, facilities, or financial support under a local franchise issued to the provider by the unit before July 1, 2006, regardless of whether the provider elects to:

(A) continue the local franchise under section 21(b)(1) of this chapter; or

(B) terminate the local franchise under section 21(b)(2) of this chapter and continue providing video service in the unit under a certificate issued under this chapter.

(b) As used in this section, "PEG channel" refers to a channel made available by a provider on the provider's video service system for public, educational, and governmental programming.

(c) The holder of a certificate under this chapter shall provide in the unit at least the number of PEG channels that the provider described in section 21(a) of this chapter is required to provide in the unit under the terms of the local franchise described in subsection (a)(2).

(d) If the local franchise described in subsection (a)(2) requires the provider described in section 21(a) of this chapter to provide financial support for public, educational, or governmental programming in the unit, the holder of a certificate under this chapter shall pay the unit the same cash payments on a per subscriber basis that the provider described in section 21(a) of this chapter is required to pay the unit under the terms of the local franchise. The holder shall remit payments under this subsection to the unit on a quarterly basis, along with the franchise fee paid to the unit under section 24 of this chapter. For each calendar quarter, the holder shall remit to the unit an amount equal to:

(1) the cash payment for the quarter due from the provider described in section 21(a) of this chapter; multiplied by

(2) a fraction, the numerator of which equals the number of subscribers served by the holder in the unit, and the denominator of which equals the total number of subscribers served by all providers in the unit.

(e) Any payments remitted to a unit under subsection (d):

(1) are made:

(A) for the purposes set forth in 47 U.S.C. 531; and

(B) under the unit's authority under 47 U.S.C. 541(a)(4)(B); and

(2) may not be credited against the franchise fee payable to the unit under section 24 of this chapter.

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1       **Sec. 26. (a) This section applies in a unit or an unincorporated**  
 2 **area of Indiana that:**

3       **(1) is included in the service area of a holder of a certificate**  
 4 **issued under this chapter; and**

5       **(2) does not require a provider described in section 21(a) of**  
 6 **this chapter to provide PEG channel capacity, facilities, or**  
 7 **financial support under a local franchise issued before July 1,**  
 8 **2006.**

9       **(b) As used in this section, "PEG channel" has the meaning set**  
 10 **forth in section 25(b) of this chapter.**

11       **(c) As a condition of issuing or renewing a certificate to a holder**  
 12 **under this chapter, and upon:**

13       **(1) the petition of a unit or an unincorporated area included**  
 14 **in the holder's service area under the certificate; or**

15       **(2) the commission's own motion;**

16 **the commission may require the holder to provide PEG channel**  
 17 **capacity, facilities, or financial support to one (1) or more units or**  
 18 **unincorporated areas in the holder's service area under the**  
 19 **certificate.**

20       **(d) As allowed by 47 U.S.C. 531, the commission may do the**  
 21 **following in exercising its authority under this section:**

22       **(1) Adopt rules and procedures for the designation or use of**  
 23 **PEG channel capacity in each unit or unincorporated area in**  
 24 **which the requirements apply.**

25       **(2) Enforce any requirement concerning the provision or use**  
 26 **of PEG channel capacity. The commission's enforcement**  
 27 **authority under this subdivision includes the authority to**  
 28 **enforce any provision that:**

29       **(A) is proposed by the holder and incorporated in the**  
 30 **holder's certificate; and**

31       **(B) concerns services, facilities, or equipment related to**  
 32 **PEG channel capacity;**

33 **regardless of whether the provision is required in rules or**  
 34 **procedures adopted by the commission under subdivision (1).**

35       **(3) If PEG channel capacity is designated under the**  
 36 **certificate, prescribe rules and procedures:**

37       **(A) under which the holder is permitted to use the**  
 38 **designated channel capacity to provide other services, if**  
 39 **the channel capacity is not being used in the unit or**  
 40 **unincorporated area for the designated purposes; and**

41       **(B) that set forth the conditions under which the holder**  
 42 **must cease any use permitted under clause (A).**

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1        **Sec. 27. (a) The operation of a PEG channel provided under**  
 2        **section 25 or 26 of this chapter is the responsibility of the unit or**  
 3        **unincorporated area that receives the benefit of the channel, and**  
 4        **the holder or other provider is responsible only for the**  
 5        **transmission of the channel.**

6        **(b) A unit or an unincorporated area that receives the benefit of**  
 7        **a PEG channel provided under section 25 or 26 of this chapter**  
 8        **shall ensure that all transmissions, content, and programming that**  
 9        **are transmitted over a channel or other facility of the provider are**  
 10       **submitted to the provider in a manner or form that:**

11       **(1) is capable of being accepted and transmitted by the**  
 12       **provider over the provider's video service system;**

13       **(2) does not require additional alteration or change in the**  
 14       **content by the provider; and**

15       **(3) is compatible with the technology or protocol used by the**  
 16       **provider to deliver video service.**

17       **(c) If it is technically feasible to do so, the holder of a certificate**  
 18       **under this section and a provider described in section 21(a) of this**  
 19       **chapter may cooperate to interconnect their systems to provide**  
 20       **PEG channel capacity required under section 25 or 26 of this**  
 21       **chapter. Interconnection under this section may be accomplished**  
 22       **by direct cable, microwave link, satellite, or other reasonable**  
 23       **method of connection. The parties shall negotiate the terms of the**  
 24       **interconnection in good faith, and a provider described in section**  
 25       **21(a) may not withhold interconnection of PEG channel capacity.**

26       **(d) A court with jurisdiction has exclusive authority to enforce**  
 27       **any requirement under:**

28       **(1) this section; or**

29       **(2) section 25 or 26 of this chapter.**

30       **Sec. 28. (a) This section applies to the following:**

31       **(1) A provider that holds a certificate issued by the**  
 32       **commission under this chapter.**

33       **(2) A provider that provides video service under a local**  
 34       **franchise, as permitted under section 21(b)(1) of this chapter.**

35       **(b) Subject to section 17(b) of this chapter, a provider may not**  
 36       **deny access to video service to any group of potential residential**  
 37       **subscribers based on the income level of the residents in the local**  
 38       **area in which the group resides. However, a provider:**

39       **(1) shall have a reasonable time to become capable of**  
 40       **providing video service to all households within a service area**  
 41       **included in the provider's franchise; and**

42       **(2) may satisfy the requirements of this subsection through**

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the use of an alternative technology that:

(A) offers content, service, and functionality comparable to that provided through the provider's video service system, as determined by the commission;

(B) may include a technology that does not require the use of any public right-of-way; and

(C) is approved by the commission for deployment in a particular service area.

(c) For purposes of this subsection, an "affected person" includes the following:

(1) A potential subscriber of video service from a provider.

(2) A local unit in which a person described in subdivision (1) resides, acting on behalf of the person or other similarly situated persons.

An affected person that alleges a violation of subsection (b) by a provider may petition the commission for equitable relief. Not later than forty-five (45) days after receiving a petition under this subsection, the commission shall, after notice and an opportunity for hearing, make a determination as to whether a violation of subsection (b) has occurred.

(d) If, after holding any hearing requested in the matter, the commission determines that no violation of subsection (b) has occurred, the commission's decision is final, subject to the petitioner's right to appeal the decision in a court having jurisdiction. If the commission determines that a violation of subsection (b) has occurred, the commission may issue an order requiring the provider to offer video service to those persons to whom access to the provider's video service has been denied. An order of the commission under this subsection must specify the following:

(1) A date by which the provider must offer video service to those persons to whom access has been denied as a result of the provider's violation. In specifying a date under this subdivision, the commission shall allow the provider a reasonable time to become capable of providing the required video service to the affected households.

(2) Any alternative technology described in subsection (b)(2) that the commission approves for use by the provider in making video service available to the affected households.

Except as provided in subsection (e), an order of the commission under this subsection is final.

(e) A provider may appeal:

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1 (1) a determination by the commission under subsection (d)  
 2 that a violation of subsection (b) has occurred; or  
 3 (2) any findings or requirements of the order issued in  
 4 connection with the commission's finding of a violation;  
 5 in a court having jurisdiction.

6 SECTION 37. THE FOLLOWING ARE REPEALED [EFFECTIVE  
 7 JULY 1, 2006]: IC 8-1-2.6-3; IC 8-1-2.6-5; IC 8-1-2.6-7.

8 SECTION 38. [EFFECTIVE UPON PASSAGE] (a) As used in this  
 9 SECTION, "commission" refers to the Indiana utility regulatory  
 10 commission created by IC 8-1-1-2.

11 (b) Not later than November 15, 2007, the commission shall  
 12 submit to the regulatory flexibility committee established by  
 13 IC 8-1-2.6-4 a report that includes an analysis of the following  
 14 issues:

15 (1) The status of competition in Indiana within the wireline  
 16 and wireless telecommunications industries and between the  
 17 wireline and wireless telecommunications industries.

18 (2) The level of concentration of ownership in the  
 19 telecommunications industry and the degree to which  
 20 corporate mergers, acquisitions, and buyouts within the  
 21 industry affect consumer choices and pricing in Indiana.

22 (3) For each county in Indiana, a breakdown of the number of  
 23 available providers of the following services:

24 (A) Wireline telephone services.

25 (B) Wireless telephone services.

26 (C) Wireless broadband services.

27 (D) Broadband services other than wireless broadband  
 28 services.

29 The commission shall pay particular attention to the  
 30 availability of broadband services in underserved areas (as  
 31 defined in IC 8-1-33-13).

32 (4) The effects of the following on universal service in  
 33 Indiana:

34 (A) The convergence of telecommunications service and  
 35 technologies.

36 (B) State and federal regulatory decisions.

37 (5) The degree to which the use of new technologies in the  
 38 telecommunications industry affects the reliability of  
 39 telecommunications service, including the provision of  
 40 enhanced 911 services and 211 services.

41 (6) The impact on consumers and telecommunications service  
 42 providers of:

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(A) federal telecommunications laws and regulations; and  
 (B) state and federal judicial decisions concerning  
 telecommunications laws and regulations.

(7) A comparison of Indiana's contributions to the federal  
 universal service fund versus federal universal service fund  
 allocations or discounts provided to eligible recipients in  
 Indiana.

(c) In compiling the information required under subsection  
 (b)(3), the commission shall prepare a map identifying the location  
 of the infrastructure used to provide the services described in  
 subsection (b)(3). The map prepared under this subsection is  
 confidential and exempt from public disclosure under  
 IC 5-14-3-4(a)(1). The map shall not be included in the report  
 prepared by the commission under this SECTION but shall remain  
 on file in the offices of the commission.

(d) The report prepared under this SECTION must be separate  
 from the commission's annual report to the regulatory flexibility  
 committee under IC 8-1-2.6-4. The commission shall include in the  
 report any recommendations for proposed legislation concerning  
 the issues analyzed in the report.

(e) The commission shall involve the following entities in the  
 development of the report under this SECTION:

- (1) Colleges and universities.
- (2) Rural electric membership corporations.
- (3) Incumbent local exchange carriers.
- (4) Competitive local exchange carriers.
- (5) Cable television providers.
- (6) The office of utility consumer counselor created by  
 IC 8-1-1.1-2.
- (7) CMRS providers (as defined in IC 36-8-16.5-6).

SECTION 39. An emergency is declared for this act.

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